

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX APPLICATION No 38 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
- 1 - 5 No

COMMISSIONER OF INCOME TAX

Versus

RAMPURSHOTTAM AGRAWAL

Appearance:

MR MANISH R BHATT for Petitioner
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.R.DAVE

Date of decision: 17/12/97

ORAL JUDGEMENT

The applicant wants this court to answer two questions suggested in paragraph 3 of the application under Section 256(2) of the Income Tax Act, 1961. These questions areas under:-

1. "Whether, the Appellate Tribunal is right in law and on facts, in holding that the assessment order had merged with the Appellate Order and therefore the Commissioner of Income-tax could not invoke the jurisdiction under Section 263 of the Act, when the Assessing Officer had not at all considered the amount of Rs. 1,75,000/- and the said point was also not agitated by the assessee before the Appellate Authority?"
2. "Whether, the Appellate Tribunal is right in law and on facts in setting aside the order passed by the Commissioner of Income Tax under Section 263 whereby he has directed the Assessing Officer to redo the assessment?"

The relevant facts are that in search and seizure operation under Section 132 of the said Act at the assessee's residence and business premises cash amount of Rs. 2,08,606/- was detected, out of which Rs. 2,00,000/- were seized. At the time of search the assessee had stated that out of that amount a sum of Rs. 1,75,000/- was given to him by his brother Vedprakash and the rest belonged to his wife and mother. During the proceedings under Section 132(5) of the Act the assessee contended that the said amount was cash of M/s. International Exim Corporation brought by Shri Premchand who looked after cash of that firm and the rest of the amount of Rs. 15,000/- and Rs. 19,000/- were of his wife and mother, respectively. The Assessing Officer completed the assessment on 31.3.1983 adding Rs.34,000/- being the amounts that belonged to the wife and the mother of the assessee, in his total income. The Commissioner of Income Tax in exercise of his power under Section 263 set aside that assessment order on 15.1.1985 and directed the Income Tax Officer to do the assessment afresh after making necessary enquiries.

The assessee appealed against the order of the Commissioner of Income Tax passed under Section 263 of the said Act before the I.T.A.T. and the Tribunal by its order dated 14.2.1994 holding that the Income Tax Officer had concluded in the assessment order under Section 143(3) of the Act that a sum of Rs. 1,75,000/- had been satisfactorily explained by the assessee and that the I.T.O. had made deep enquiries into the matter, set aside the order of the Commissioner of Income Tax which was made under Section 263 of the said Act.

It however, appears that after the direction was given under Section 263 by the Commissioner of Income Tax

to the I.T.O. to proceed afresh, the I.T.O. had proceeded with the matter afresh since there was no stay granted of that order of the Commissioner of Income Tax. The de novo assessment order was made against the assessee, but, in the appeal filed by the assessee against that order the Commissioner of Income Tax (Appeals) by his order dated 28.12.1990 partly allowing the appeal, came to the conclusion that the source of cash of Rs. 1,75,000/- had been satisfactorily explained by the assessee and therefore it was not fair and reasonable to treat the same as unexplained income. The appellate authority therefore deleted the addition of Rs. 1,75,000/- from the income of the assessee. It is stated on behalf of the revenue that the revenue has not challenged the said order of the Commissioner of Income Tax (Appeals) which has been made in favour of the assessee after the matter was remanded by the Commissioner of Income Tax by an order under Section 263. In this view of the matter, any exercise that may be undertaken for deciding the question as to whether the Commissioner of Income Tax had jurisdiction under Section 263 of the Act or not would be an exercise in futility and purely an academic exercise which we do not propose to undertake. This application is, therefore, rejected. Rule is discharged with no order as to costs.

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